LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 14 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 873

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS; and CONSTANTINE D. CHAPRALIS, alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS;

Respondents.

PETER S. SARELAS,

Petitioner,

vs.

PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETER S. SARELAS
30 North La Salle Street,
Chicago 2, Illinois
CEntral 6-1442
Petitioner, Pro Se.

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA keview 5-6581

INDEX.

	PAGE
Opinions below	2
Documents and Papers transmitted with Petition	2
Jurisdiction	3
Questions Presented (Case No. 1)	5
(Case No. 2)	10
Constitutional and Statutory Provisions Involved	12
Statement of the Case (Case No. 1)	17
I. Procedural History of the Case	17
II. The Facts Material to the Questions Presented	21
Statement of the Case (Case No. 2)	21
I. Procedural History of the Case	25
II. The Facts Material to the Questions Presented	27
Reasons for granting the Writ	29
Conclusion	34
Appendices:	
A—Judgment of Illinois Supreme Court (Case No. 1)	1
B—Illinois Supreme Court Order denying Motion to Reconsider Order Dismissing Appeal (Case No. 1)	4
C—Judgment of Illinois Supreme Court (Case No. 2)	6

CITATIONS

Cases.

	PAGE
Baltimor & O. R. Co. v. United States, 298 U.S. 349, 56 S. Ct. 797, 807-808	30
Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 S. Ct. 856, 861	33
Brinckerhoff v. Hill, 281 U.S. 673, 678, 680	30
Clark v. United States, 289 U.S. 1, 15	32
Dayton v. Drumheller, 32 Idaho 283, 182 P. 102, 104-105	32
Dunleer Co. v. Minter Homes Corp., D.C. 33 F. Supp. 242	33
Gebhardt v. United Rys. Co. of St. Louis, 220 S.W. 677, 679 (Mo.)	32
Hill v. State of Texas, 316 U.S. 400, 406, 62 S. Ct. 1159, 1162	33
Home Telephone & Telegraph Co. v. Los Angeles, 227 U.S. 278, 286	30
Interstate Commerce Commission v. Nashville R.R. Co., 227 U.S. 93	31
Ladner v. United States, 358 U.S. 169, 79 S. Ct. 209, 213	33
McRae v. Afro-American Co., 172 F. Supp. 184, 187	32
Mills v. Denny, Iowa 63 N.W. 2d 222, 229	32
Napue v. People of the State of Ilinois, 360 U.S. 264, 79 S. Ct. 1173, 1178	31
Norris v. Alabama, 294 U.S. 587, 590, 55 S. Ct. 579, 580	31
Ohio Bell Telephone Company v. Public Utilities Commission, 301 U.S. 292, 305	30

PAGE

Oyama v. State of California, 68 S. Ct. 269, 270, 332 U.S. 633 31

P. Rielly & Son v. National Parlor Furniture Co., 192 Ill. App. 395 34

Rausch v. Anderson, 75 Ill. App. 526, 536, 537 32

Robb v. Connelly, 4 S. Ct. 544, 551, 111 U.S. 624, 28 L. Ed. 542 29

Ross v. Ross, 35 N.J. Super. 242, 113 A. 2d 700 34

Scott v. McNeal, 154 U.S. 34, 45 30

Shelley v. Kraemer, 68 S. Ct. 836, 842-843, 844, 846, 847, 334 U. 1 30

Sinclair Refining Co. v. Jenkins Petroleum Process Co., 289 U.S. 689, 696, 53 S. Ct. 736, 738 33-34

Smith v. O'Grady, 61 S. Ct. 572, 573, 312 U.S. 329 34

United States v. Bank of New York & Trust Co., 296 U.S. 463, 56 S. Ct. 343, 348 34

White v. Nichols, 3 Howard (44 U.S.) 266, 287, 291 32

Williams v. Buffy, 96 U.S. 176, 183 34

Constitution.

United States Constitution, Fourteenth Amendment, Section 1 12

Illinois Constitution, Article II, Sections 1, 2, 5, 19 10-11
(Illinois Rev. Stat., 1961, pp. 9, 10.)

Illinois Constitution, Article VI, Sections 8, 11 ..... 3, 4
(Illinois Rev. Stat., 1961, p. 16.)

Statutes.

PAGE

Title 28, U.S.C.A., Section 1257(3) 3

Illinois Appellate Practice, Chap. 110, Sections 74(1)(3); 75(1)(a); 77(1), Ill. Rev. Stat., 1961, pp. 1241, 1242 4-5

Illinois Supreme Court Rules, Chap. 110, 101.36(4)(a)(3); 101.38, Ill. Rev. Stat., 1961, pp. 1260, 1261, 1262 8-9

Illinois Supreme Court Rules, Chap. 110, 101.19,6(4)(5)(a), Ill. Rev. Stat., 1961, pp. 1251-1252 6-7

Illinois Supreme Court Rules, Chap. 110, 101.15(1)(2), Ill. Rev. Stat., 1961, p. 1249 12-13

Illinois Civil Practice Act, Chap. 110, Section 48(1)(a) to 48(1)(i); 48(3); 48(6), Ill. Rev. Stat., 1961, p. 1235 13-15

Illinois Civil Practice Act, Chap. 110, Sections 40(1)(2)(3); 42(2)(3); 45(1)(2), Ill. Rev. Stat., 1961, pp. 1233, 1234 15-16

Authorities.

D.C. 4 F.R.D. 469 34

4 Moore's Federal Practice (2nd Ed.) par. 33.29 (2) 34

IN THE

Supreme Court of the United States

No.

PETER S. SARELAS,

Petitioner,

vs.

JOHN C. GEKAS; and CONSTANTINE D. CHAPRALIS, alias Major C. D. Chapralis; and ANDREW CARDARAS; and GEORGE W. ALEXANDER; and THEMIS ANAGNOST; and ATHANASIOS A. PANTELIS, also known as A. A. Pantelis; and WILLIAM J. RUSSIS; and DEMOSTHENES I. GEORGOULIS; and A. THOMAS RANGAVES; and DEMETRIOS PARRY; and SPYROS D. SOTER, also known as S. D. Soter; and EVANGELOS NITTIS, also known as E. Nittis; and CONSTANTINE MAZARAKIS; and GEORGE S. PORIKOS; and EVANGELOS C. DESPOTES; and THEMIS TSAOUSSIS; and ADAMANTIOS ANDROUTSOPOULOS; and GEORGE A. XYDIS; and GEORGE LOURIS;

Respondents.

PETER S. SARELAS,

Petitioner,

vs.

PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The Petitioner, Peter S. Sarelas, prays that writs of certiorari be issued to review the final judgment of the Supreme Court of the State of Illinois, dismissing the appeal in each of the above-entitled cases, sought to be reviewed on certiorari.

A single petition is filed under Rule 23.5 of the Rules of the Supreme Court of the United States, covering both cases, because they involve identical or closely related questions. The cases will be referred to as No. 1 and No. 2, respectively.

Opinions Below.

No opinion was rendered by the Supreme Court of the State of Illinois in either case.

Documents and Papers Transmitted with Petition.

1. Certified copy of Abstract of Record for each case, with nine additional copies.

2. Certified copy of Brief for each case. No Brief was filed by defendants-appellees therein.

3. Certified copies: Of Motion filed in Case No. 1, by defendants-appellees therein to dismiss appeal; Objections and Counter-Suggestions of plaintiff-appellant; Motion filed for reconsideration of Judgment dismissing appeal; Objections of defendants-appellees.

4. Certified copies: Of Motion filed in Case No. 2, by defendants-appellees therein to dismiss appeal; Objections and Counter-Suggestions of plaintiff-appellant.

5. Certified copies: Of the judgment of the Supreme Court of Illinois, in Case No. 1, entered on January 16, 1962, dismissing the appeal (Appendix A *infra* pp. 1-3); and of the Order entered on January 23, 1962, denying the Motion for reconsideration of judgment dismissing the appeal. (Appendix B, *infra* pp. 4-5).

6. Certified copy of the judgment of the Supreme Court of Illinois, in Case No. 2, entered on January 22, 1962 (Appendix C, *infra* pp. 6-7).

Jurisdiction.

The judgment of the Supreme Court of Illinois in Case No. 1, dismissing the Appeal, was entered on January 16, 1962 (Appendix A, *infra* pp. 1-3). And the timely motion for reconsideration of judgment dismissing the appeal, was denied on January 23, 1962 (Appendix B, *infra* pp. 4-5).

The judgment of the Supreme Court of Illinois in Case No. 2, dismissing the Appeal, was entered on January 22, 1962 (Appendix C, *infra* pp. 6-7). This Case was appealed from the Appellate Court of Illinois, First District. It was there heard on transfer from the Supreme Court of Illinois (Abst. 67; App. Court Rec. 2-4, 6-7, 9-10). The Opinion of the Appellate Court, not published in full, appears as Appendix "A" (pp. 45-50) in the certified copy of the Brief. It is reported in abstract, at 32 Ill. App. 2d 320, 177 N.E. 2d 867. Said Brief is transmitted with this Petition.

The jurisdiction of this Court is invoked under 28 U.S. C.A. Sec. 1257(3).

Article VI, Sec. 11, of the Constitution of the State of Illinois, provides:

> "After the year of our Lord one thousand eight hundred and seventy-four appellate courts, of uniform organization and jurisdiction, may be created in districts formed for that purpose, to which such appeals and writs of error as the General Assembly may provide, may be prosecuted from circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved, and in such other cases as may be provided by law."

And Article VI, Sec. 8, of the Constitution of the State of Illinois provides:

"Appeals and writs of error may be taken to the Supreme Court held in the grand division in which the case is decided, or by consent of the parties, to any other grand division."

The Legislature provided for such appeals by the enactment of Sections 74, 75, 77 of Chap. 110, of the Illinois Revised Statutes (1959-1961). Section 74 thereof provides:

"(1) Every order, determination, decision, judgment or decree reviewable by the Supreme or Appellate Court of this State is subject to review by notice of appeal. The review shall be designated an appeal and constitutes a continuation of the proceeding in the trial court. The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error."

* * *

"(3) Every order, determination, decision, judgment or decree of the Appellate Court heretofore reviewable by the Supreme Court by writ of error shall hereafter be reviewable only by appeal. The appeal shall be perfected by notice of appeal filed with the Clerk of the Appellate Court within 40 days after the order, determination, decision, judgment or decree of the Appellate Court becomes final, either through denial of a petition for a hearing or the expiration of the time within which a petition for rehearing might have been filed."

* * *

"No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional. The appeal may be taken by any person heretofore entitled to sue out a writ of error. It presents to the Supreme Court all issues heretofore presented by writ of error, and constitutes a continuation of the proceeding in the Appellate Court. All steps subsequent to the filing of the notice of appeal shall be provided by rule."

And Section 75 thereof provides:

"(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved. * * *".

And Section 77 thereof provides:

"(1) Appeals shall lie to the Appellate or Supreme Court, in cases in which any form of review may be allowed by law, to review the final judgments, orders or decree of the circuit court, the superior court of Cook County, the county courts, the city courts and other courts whose judgments, orders and decrees are reviewable therein, under such limitations and conditions as may be imposed by law and subject to rules."

From the final judgment of the Supreme Court of Illinois, after the taking of such an appeal in the above entitled cases, petitioner has no further appellate remedy under the laws of the State of Illinois.

Questions Presented.

1. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal on respondents' motion asserting a patently false allegation as to finality of summary judgment violates the Due Process Clause of the Fourteenth Amendment.

(i) Where the summary judgment order of the state trial court, appealed from to the Illinois Supreme Court states "That the motion of the defendants for summary judgment against the plaintiff on the alleged cause of action for assault or assault and battery is sustained and it is ordered that so far as the plaintiff's Complaint for damages arising out of assault and battery alleged to have been committed by the defendants upon and against him, it be and is hereby dismissed and it is ordered that the plaintiff in respect to that part of his Complaint, *go hence without*

a day and take nothing by this suit." (Case No. 1, Abst. 123; Rec. 276). (Emphasis added).

(ii) Where the judgment order appealed from to the Illinois Supreme Court shows on its face that the trial court, without hearing evidence, makes findings of fact, as to respondents' intent to commit an assault or assault and battery. (Abst. 123; Rec. 276).

2. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal on respondents' motion alleging conclusions and hearsay matters dehors the authenticated Record on Appeal violates the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment.

(i) Where the record shows on its face that the deposition officer never made a return of the discovery deposition as directed by the order of the trial court (Case No. 1, Abst. 11, Rec. 57), and as required by Rule 101.19-6(4)(5)(a), of the Illinois Supreme Court Rules, Ch. 110, Illinois Revised Statutes (1957-1961).

(ii) Where the record shows on its face that the respondents filed their own "Excerpts" and transcript of deposition as "exhibits", (Abst. 83, 117-121; Rec. 222, 258-261), in violation of the order of the trial court (Abst. 11; Rec. 57) and in violation of the Illinois Supreme Court Rule 101.19-6(4)(5)(a), Ch. 110, Illinois Revised Statutes, (1957-1961) which provides:

> "(4) Submission to Deponent; Changes; Signing.
>
> "When the testimony is transcribed the deposition shall be submitted to the deponent for examination and shall be read to or by him, unless waived by the deponent and by the parties. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a state-

ment of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties waive the signing or the deponent is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent, the officer shall state in his certificate the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor. The deposition may then be used as fully as though signed, unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

"(5) Certification and Filing by Officer; Fees and Charges; Copies; Notice of Filing.

"(a) The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. In the case of an evidence deposition, and at the request of any party in the case of a discovery deposition, the officer shall then securely seal the deposition or depositions, together with all exhibits, in an envelope indorsed with the title of the action and marked 'Depositions of (here insert names of deponents)' *and promptly file it* OR SEND *it by registered mail to the clerk of the court for filing.* A deposition so certified and filed requires no further proof of authenticity.

"(b) The party causing a deposition to be filed shall promptly serve notice thereof on the other parties." (Emphasis added).

(iii) Where the record on appeal shows on its face that the grounds specified in petitioner's verified Motion to Suppress the respondents' own "Excerpts" and transcript of deposition, stand admitted by their failure to file an Answer. (Abst. 117-121; Rec. 258-261).

(iv) Where the Record on Appeal shows on its face that respondents did not file a praecipe for any additional parts of the record to be incorporated in the record on appeal (Abst. 126; Rec. 290), as required by Rule 101.36(1)(a)(3) of the Illinois Supreme Court, Ch. 110, Illinois Revised Statutes (1959-1961), which provides:

> (1)(a) "Praecipe practice. In appeals taken directly to an Appellate Court or this court, the appellant shall, within 10 days after the notice of appeal has been filed, prepare and file a praecipe with the clerk of the trial court, with proof of service of a copy on the appellee or his attorney, in which appellant shall designate what parts of the trial court record are to be incorporated in the record on appeal. *The appellee*, or coparty prosecuting a separate appeal, *shall within 5 days after being so served, file a praecipe for any additional parts of the record that he may desire to have incorporated in the record on appeal*, with proof of service of a copy upon each party or attorney or firm of attorneys who signed the notice of appeal." (Emphasis added).
>
> (3) "If the record on appeal is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant.
>
> "Any party who has specified for incorporation in the record on appeal unnecessary and immaterial portions of the trial court record may be ordered by the reviewing court, irrespective of how the appeal is decided, to bear the entire expense of incorporating those portions, as costs in the case."

And where Rule 101.38 provides:

> "The abstract need only be sufficient to present fully every error relied upon. Matters in the record on appeal not necessary for a full understanding of the questions presented for decision shall not be abstracted.

* * * The abstract will be taken to be accurate and sufficient unless the opposing party files an additional abstract."

3. Whether the State of Illinois Supreme Court can ignore the command of the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment and deny at will, the safeguards of our constitutional system, required to be extended to all.

(i) Where under the Illinois constitutional and statutory provisions quoted on pages 3-5, 6-7, 8-9 of this Petition and adopted here by reference, no authority existed for such judgment order dismissing the appeal.

(ii) Where such judgment order of dismissal violated also the basic constitutional guarantees of the Illinois Constitution (Sections 1, 2, 5, 19, Article II; and Sections 8, 11, Article VI); the legislative enactments pertaining to appeals (Sections 74(1), 75(1)(a), 77(1), Chapter 110, Illinois Revised Statutes (1959-1961); and the Rules promulgated by the Illinois Supreme Court relating to appeals (Rules 101.36(1)(a)(3); 101.38, Chapter 110, Illinois Revised Statutes (1959-1961). Sections 1, 2 and 5, Article II, of the Illinois Constitution provide:

Sec. 1. "All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed."

Sec. 2. "No person shall be deprived of life, liberty or property without due process of law."

Sec. 5. "The right of trial by jury, *as heretofore enjoyed, shall remain inviolate;* * * *". (Emphasis added.)

Section 19 of Article II, and Sections 8 and 11, Article VI, of the Illinois Constitution are quoted on pages 10-11, 3-4, of this Petition and adopted here by reference.

Sections 74(1), 75(1)(a), 77(1) and Illinois Supreme Court Rules 101.36(1)(a)(3), 101.38, all in Chapter 110, Illinois Revised Statutes (1959-1961), are also quoted on pages 4-5, 8-9, of the Petition and adopted by reference.

Case No. 2.

1. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal from the Appellate Court, on respondents' motion alleging conclusions only, violates the Due Process Clause of the Fourteenth Amendment.

(i) Where an appeal from the Appellate Court's Decision is a Constitutional as well as Common Law right. (Article VI, Sections 8, 11, of the Constitution of the State of Illinois; Section 74(3), Ch. 110, Illinois Revised Statutes (1959-1961), quoted in this Petition on pages 3-4 and adopted here by reference).

2. Whether the judgment order of the Illinois Supreme Court dismissing petitioner's appeal on such motion of the respondents violates the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment.

(i) Where the Appellate Court's Decision affirmed the dismissal of petitioner's cause of action by the State trial court, which did not hear evidence and denied petitioner's right to trial by jury. (Abst. 61, 22; Rec. 19, 149).

(ii) Where the Decision of the Appellate Court negates and violates Section 19, Article II, of the Illinois Constitution which provides:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may

receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

(iii) Where the Appellate Court's Decision affirmed the state trial court's dismissal of petitioner's cause of action on respondents' motion which did not specify any grounds whatever. (Abst. 23, 24; Rec. 25, 26).

(iv) Where said Decision of the Appellate Court holds that the publication and filing of fantastic, inherently false and intentionally made malicious and libelous answers to interrogatories (Abst. 4, 5, 6, 45, 46, 47; Rec. 5, 6, 118, 119, 120), are absolutely privileged, contrary to the well established rule of law that interrogatories and answers thereto are not pleadings and therefore no privilege can be asserted.

(v) Where the said Decision negates and violates the well established rule of law that the question of respondents' conduct, of motive, of good faith and honest purpose, of bad faith and malicious purpose and whether they were protected under the circumstances, is a question of fact for the jury and not a question of law for the court.

(vi) Where the Appellate Court's Decision negates and violates the Rule of Law that the alleged privileged communication cannot be used as a weapon of offense and as a shield to enable malefactors to carry out contemplated malicious wrongs and crimes against society.

(vii) Where the Decision of the Appellate Court negates and violates the Rule of Law that the immunity of a privileged communication is the exception, and he who relies upon an exception must prove all the facts necessary to bring himself within it.

Constitutional and Statutory Provisions Involved.

A). Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B). Article II, Sections 1, 2, 5, 19 (Bill of Rights); Article VI, Section 8 (Supreme Court); Article VI, Section 11 (Appellate Courts), of the Constitution of the State of Illinois, Ill. Rev. Stat. 1961, pp. 9-10, 16, are quoted on pages 3, 4, 9, 10-11 of this Petition and adopted here by reference.

C). Illinois Appellate Practice, Chap. 110, Sections 74(1)(3); 75(1)(a), 77(1), Ill. Rev. Stat. 1961, pp. 1241, 1242; Illinois Supreme Court Rules, Chap. 110, 101.36(1)(a)(3); 101.38, Ill. Rev. Stat. 1961, pp. 1260, 1261, 1262, are quoted on pages 4-5, 8-9 of the Petition and incorporated here by reference.

D). Illinois Supreme Court Rules, Chap. 110, 101.19-6 (4)(5)(a), Ill. Rev. Stat. 1961, pp. 1251-1252, are quoted on pages 6-7 of the Petition and adopted here by reference.

E). Illinois Supreme Court Rules, Chap. 110, 101.15 (1)(2), Ill. Rev. Stat. 1961, p. 1249, provides:

> "(1) Affidavits in support of and in opposition to a motion for summary judgment or decree, and affidavits under section 48 of the Civil Practice Act,

shall be made on the personal knowledge of the affiants; *shall set forth with particularity the facts* upon which the claim, counterclaim or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; *shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto.* If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used. (Emphasis added.)

"(2) If the affidavit of either party contains a statement that any of the material facts which ought to appear in the affidavit are known only to persons whose affidavits affiant is unable to procure, by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured, and what affiant believes they would testify to if sworn, with the reasons for his belief, the court may make any order that may be just, either granting or refusing the motion, or granting a continuance to permit affidavits to be obtained, or for submitting interrogatories to or taking the depositions of any of the persons so named, or for producing papers or documents in the possession of those persons or furnishing sworn copies thereof. The interrogatories and sworn answers thereto, depositions so taken, and sworn copies of papers and documents so furnished, shall be considered with the affidavits in passing upon the motion."

F). Illinois Civil Practice Act, Chap. 110, Section 48(1)(a) to 48(1)(i) inclusive, specifying all the grounds for involuntary dismissal, and 48(3), 48(6), Ill. Rev. Stat. 1961, p. 1235, provide:

"48. Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following groun

If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

"(a) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer to a court having jurisdiction.

"(b) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.

"(c) That there is another action pending between the same parties for the same cause.

"(d) That the cause of action is barred by a prior judgment.

"(e) That the action was not commenced within the time limited by law.

"(f) That the claim or demand set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy.

"(g) That the claim or demand asserted is unenforceable under the provisions of the Statute of Frauds.

"(h) That the claim or demand asserted against defendant is unenforceable because of his infancy or other disability.

"(i) That the claim or demand asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim or demand."

"(3) If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised the court may decide the motion upon the af-

fidavits and evidence offered by the parties, or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer *and shall so deny it if the action is one at law and a jury demand has been filed by the opposite party in apt time.*" (Emphasis added.)

"(6) The form and contents of said procedure relating to affidavits under this section shall be as provided by rule."

G). Illinois Civil Practice Act, Chap. 110, Sections 40(1)(2)(3); 42(2)(3); 45(1)(2); Ill. Rev. Stat. 1961, pp. 1233, 1234, provide:

"40.(1) General issues shall not be employed. Every answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates.

"40.(2) Every allegation except allegations of damages, not explicitly denied is admitted, unless the party states in his pleading that he has no knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny.

"40.(3) Denials must not be evasive, but must fairly answer the substance of the allegation denied."

"42.(2) No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet.

"42.(3) All defects in pleadings, either in form or substance not objected to in the trial court are waived."

"45.(1) All objections to pleadings shall be raised by motion. The motion *shall point out specifically* the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be

stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

"(2) If a pleading or a division thereof is objected to by motion to dismiss or for judgment or to strike out the pleading, because it is substantially insufficient in law, *the motion must specify wherein the pleading or division thereof is insufficient.*" (Emphasis supplied.)

STATEMENT OF THE CASE.

I. Procedural History of the Case (No. 1).

The petitioner filed his Complaint with Jury Demand on December 8, 1958 (Abst. 1-5; Rec. 2-6, 8), charging in one Count (3½ pages) that the respondents, unlawfully, wickedly and maliciously conspired, confederated and agreed together with intent to commit a riot and assault, injure, harm, intimidate, humiliate, defame and embarrass the petitioner and to prevent and stop him from presiding in a meeting of the Hellenic Professional Society of Illinois, a legal entity incorporated by the State of Illinois, in the Morrison Hotel, Chicago, Illinois, on October 31, 1958. Respondents' overt acts in pursuance of the conspiracy are alleged and specified in the complaint. (Abst. 1-5; Rec. 2-6).

On January 22, 1959, the motion of two of the respondents to dismiss the Complaint was denied. (Abst. 10; Rec. 49). On the same day an order was entered for the taking of petitioner's discovery deposition and excused the respondents from filing answers or objections to petitioner's *written interrogatories until 15 days after the completion* of the oral discovery deposition of petitioner by "each and every one" of the respondents. (Abst. 10-11; Rec. 51).

On April 1st, 1959, an order was entered directing Master Thomas Sheehan "to take testimony therein of the plaintiff under a discovery deposition on behalf of the defendants and return the same to the Court within a reasonable period hereafter." (Abst. 11; Rec. 57). By successive motions, the respondents were granted extensions to answer or plead to the Complaint, until 15 days after the "return" of petitioner's discovery deposition. (Abst. 11; Rec. 60),

Respondents took discovery depositions in 11 different sessions totaling over 21 hours from January 29, 1959 to April 7, 1960. (Abst. 19; Rec. 68).

On April 20, 1960, petitioner filed his verified Motion to terminate the depositions or for alternative relief and for rule on respondents to answer the Complaint and written interrogatories. The motion specified the reasons with particularity. (Abst. 12-22; Rec. 68-75). Certain respondents filed answers to the Motion while others filed motions to strike. (Abst. 22-36; Rec. 77-108). Replies and Objections were filed by petitioner (Abst. 36-58; Rec. 109-138). "Replication" was filed by certain respondents. (Abst. 58, 72; Rec. 139-140, 172-173).

By the Order of the state trial court entered April 20, 1960, the hearing was set for May 26, 1960. (Abst. 22; Rec. 75-B). It was reset by order of court for June 16, 1960. It was again reset for June 21 1960 (Abst. 85; Rec. 224). On June 22, 1960, the trial court entered an order staying all proceedings until the Court rules on respondents' motion for summary judgment. (Abst. 122; Rec. 269).

No hearing was ever granted on petitioner's said Motion.

No answer was filed to the complaint by respondents.

No answer was filed by any of the respondents to petitioner's interrogatories.

No "Return" was ever filed by the deposition officer Master Sheehan. (Abst. 117-121; Rec. 258-261).

On June 6 and 7, 1960, the respondents filed their own "Excerpts" and transcript of discovery deposition as "exhibits" (Abst. 83; Rec. 222). These are described with particularity in petitioner's verified Motion to Suppress such "exhibits". No answer was filed by respondents to said motion. (Abst. 117-121; Rec. 258-261).

On May 16, 1960, without leave of court, multitudinous papers and documents were filed by a stranger to petitioner's suit, one Timothy Bishop (Abst. 59-71; Rec. 143-167). Such papers include a letter from the Greek Consul of Chicago directed "*To the Judges of the Superior Court of Cook County, Illinois*" (Abst. 71; Rec. 166). Another document included consists of seven typewritten pages, and contains a defamatory and libelous statement against petitioner by John C. Gekas, one of the respondents (Abst. 65-68; Rec. 155-159). At the top of the first page appears in handwriting "March 20, 1959" (Abst. 65; Rec. 155). On June 7, 1960, a signed copy of such document was filed as an "exhibit" by order of the state court Judge John J. Lupe. (Abst. 83, 65-76; Rec. 222, 155-161). On the same day additional multitudinous documents were filed as "exhibits", by order of said state court Judge. (Abst. 83-85; Rec. 222-224). Motions and affidavits were filed by respondents on various dates between May 16, 1960 to June 7, 1960, including an affidavit by the wife of respondent, Themis Anagnost, alleging that their acts alleged in petitioner's Complaint (Abst. 3-5; Rec. 4-5), were "privileged". (Abst. 74-75, 76-77, 78, 79-80, 81, 82; Rec. 190, 199-200, 201, 202, 204, 205, 206-208, 210-211, 218, 220).

On June 6, 1960, in an affidavit filed in support of respondents' motion for summary judgment, it is alleged that an Exhibit A is certified by Thomas J. Sheehan, Master in Chancery of said state trial court and "contain the statements and admissions" of petitioner, "showing that any acts and statements of the defendants (respondents) or any of them, if any were made, were and are privileged and that the plaintiff (petitioner) has no cause of action." (Abst. 81-82; Rec. 218).

On June 17, 1960, petitioner's Motion and Counter Affidavit were filed asking the state court to strike or deny

respondents' motions and their multitudinous documents and papers. The grounds, supported by exhibits attached thereto, are stated with particularity. (Abst. 85-105, 106-116; Rec. 225-242, 243-256).

On June 22, 1961, the state trial court entered an order denying respondents' motion to strike the Complaint alleging assault or assault and battery. In the same order said court sustained respondents' motion for summary judgment, and ordered that the plaintiff "*go hence without a day and take nothing by this suit.*" (Abst. 123; Rec. 276). Without hearing evidence and without trial on the merits, the court in the same order makes findings of fact, usurping the province of the jury, that none of the respondents intended nor did they commit an assault upon petitioner nor did they intend to or commit an assault and battery upon petitioner. (Abst. 123; Rec. 276).

On August 2nd, 1961, petitioner filed his Notice of Appeal to the Illinois Supreme Court appealing from the trial court's summary judgment order (Abst. 123-125; Rec. 278-280). It includes other erroneous orders of the state trial court, authorized to be presented on appeal by Section 74(1), Chap. 110, Ill. Rev. Stat. p. 1241, which provides: "The appeal presents to the reviewing court all issues which heretofore have been presented by appeal and writ of error." And authorized by Section 74(2), same Chapter, p. 1241, which provides: "All matters in the trial court record actually before the court on appeal may be considered by the court for all purposes, but if not properly authenticated the court may order further authentication."

In the Brief filed by petitioner in the Illinois Supreme Court, the jurisdictional grounds are stated with particularity and the constitutional questions are raised and as-

serted. (Certified copy of Brief, pp. 8-9, 23-28, 5-7, pars. 1, 2, 3, 8, 10). They were also raised and asserted in petitioner's Objections and Counter-Suggestions to respondents' motion to dismiss the appeal (p. 5, par. 8; p. 6, 1st par.; p. 7, par. 18; p. 8, par. 22): under Points and Authorities (p. 2, Point III; pp. 3-4, Point III-A). They were raised and asserted in petitioner's motion for reconsideration of the Judgment Order of dismissal by the Illinois Supreme Court (pp. 3, 4, 5th and 6th pars.). (Certified copies are transmitted with Petition).

Constitutional questions were raised and asserted also in petitioner's pleadings in the state trial court. (Abst. 7, 15, par. (c), 16, par. 9(a), 21, par. 18, 37, 1st par., 46, par. 10, 48, par. 2, 55, 1st par., 56, par. 1(c), 57, par. 4, 58, par. 3, 87, pars. 10, 12, 90, par. 4, 97, par. 3; Rec. 20, 70, 71, 74, 111, 119, 122, 131, 134, 137, 227-228, 231, 235).

Constitutional questions are inherent in the summary judgment order of the state trial court (Abst. 122-123; Rec. 275-276), and apparent on the face of the Record on Appeal, and are inherent in the judgment order of the Illinois Supreme Court dismissing petitioner's appeal, *viz.*: disregard and denial of the basic constitutional guarantees of Due Process of Law and Equal Protection of the Laws.

Under Illinois Practice the Appellate Court has no power or jurisdiction to pass on constitutional questions.

II. The Facts Material to the Questions Presented.

The petitioner, during the year of 1958, was president of the Hellenic Professional Society of Illinois, a non-profit corporation, incorporated by the State of Illinois. The purpose and object authorized in the Society's Charter and in its By-Laws were to maintain the honor and dignity of the several professions of the constituent members; to encourage and promote education among people of Hellenic

descent throughout the United States; and, to cooperate with other organizations of professional men in encouraging and promoting scientific research and development. The Society required that an eligible member be a graduate from an accredited college or university, American or foreign, recognized and accredited by the National Association of Colleges. (Abst. 2; Rec. 4).

The petitioner during the entire year of 1958, in conformity with the Society's stated purpose in its Charter and By-Laws, instituted 14 educational lectures by outstanding men of achievement, and the sponsorship of the American Farm School, an American Institution in Greece, on its 54th year of progress. (Abst. 39-43; Rec. 113-114).

On October 31, 1958, the Society held its annual meeting in the Morrison Hotel situated in the business center of Chicago, Illinois, to consider among other matters proposed amendments to its By-Laws, including safeguards against infiltration or admission to said Society of subversive elements or persons who are members of a subversive organization defined and listed as such by the Attorney General of the United States; and of persons convicted by a court of record for a felony or for a misdemeanor involving moral turpitude, in order to comply with and support the national policy of the United States and of the State of Illinois. (Abst. 2-3; Rec. 4).

By their motions for involuntary dismissal or for summary judgment, the respondents admit the allegations in the Complaint directly alleged, including:

1. That on to wit: October 31, 1958, they contrived with intent to injure, harm, intimidate, assault, humiliate, defame and embarrass the petitioner and to prevent and stop him from presiding at the annual meeting of the Hellenic Professional Society of Illinois, at the Morrison Hotel,

Chicago, Illinois; and did unlawfully, wickedly and maliciously combine, conspire, confederate and agree together and with other persons whose identities are unknown to the plaintiff, with the unlawful, wicked and malicious intent to incite and create a riot and to act in a violent, abusive and tumultuous manner and by these unlawful means and thereby in an unlawful manner to accomplish their purpose above described (Abst. 2-3; Rec. 4-5).

2. That in pursuance of their unlawful conspiracy and in furtherance of the unlawful object and purpose thereof, the respondents did cause and procured, directed, aided, abetted, commanded and assented to be committed the following overt acts during the annual meeting of said Society on October 31, 1958, against the petitioner:

(a) At about 8:30 o'clock P.M., on October 31, 1958, the respondents entered the said premises riotously, violently and tumultuously, and against the will of the petitioner continued and persisted in their riotous, violent and tumultuous manner for a long period, to wit: two hours, and did then and there used or caused to be used vile, abusive, insulting and opprobrious language and words against the petitioner (Abst. 3-4; Rec. 5).

(b) That the respondents then and there, unlawfully, wickedly and maliciously made or caused to be made threats of physical violence against the petitioner; and then and there made or caused attempts to be made against the petitioner with force and violence to throw him out of said premises; and then and there shouted or caused to be shouted vile, opprobrious and abusive language and words against the petitioner; and then and there unlawfully, wickedly and maliciously made or caused to be made defamatory and slanderous remarks against the petitioner

shouting to the petitioner, "Now, you Hitler and Mussolini, get out or we'll throw ou out." (Abst. 4; Rec. 5).

(c) That the respondents then and there unlawfully, wickedly and maliciously threw or caused to be thrown objects against the petitioner while he was presiding at said meeting of the Hellenic Professional Society of Illlinois; and then and there made or caused to be made violent attempts against the petitioner to prevent and stop him from presiding; and then and there made and caused to be made violent threats against the petitioner to strike him with clenched fists and to eject him forcibly from said premises (Abst. 4; Rec. 5).

That by means and in consequence of said wrongful and illegal combination and of the wrongful acts in furtherance of the wrongful object thereof; and by reason of the violent threats and threatening acts hereinabove described, caused and procured, directed, aided, abetted, commanded and consented to be committed by the respondents, the petitioner was put in fear of his life, and thereupon and by reason of the numerous persons being present and hearing said threats, and the vile, abusive and opprobrious language and defamatory words, and seeing the threatening acts and conduct of said respondents towards the petitioner, the petitioner suffered humiliation and brought into public scandal and disgrace, and was greatly wounded in his feelings and he has suffered mental anguish and pain to the great and irreparable damage of the petitioner, and against the dignity and peace of the people of the State of Illinois (Abst. 5; Rec. 5).

To avoid repetition, the foregoing statement under the heading of "Procedural History of the Case", is incorporated here by reference.

CASE NO. 2.

STATEMENT OF THE CASE.

I. Procedural History of the Case.

The petitioner appealed to the Illinois Supreme Court from the judgment order of the Appellate Court of Illinois, First District, entered on October 16, 1961, affirming the judgment order of the state trial court. (Abst. App. Ct. 67; Rec. App. Ct. 6-7). Petition for Rehearing was denied on November 20, 1961 (Abst. App. Ct. 67; Rec. App. Ct. 8-9). It was there heard on transfer from the Illinois Supreme Court (Abst. App. Ct. 67; Rec. App. Ct. 2-4). Petitioner had appealed direct to the Illinois Supreme Court from the judgment order of the state trial court entered on May 6, 1960, dismissing petitioner's suit and ordering that the petitioner "go hence without day and take nothing by his suit" (Abst. 61-62; Rec. 149, 150-151).

Petitioner's Complaint with Exhibits and Jury Demand was filed in the Superior Court of Cook County, Illinois, on March 30, 1960. (Abst. 1-22; Rec. 2-17, 18-49).

It alleges that the respondents conspired, confederated and agreed with each other to defame, libel, insult, intimidate and injure the petitioner, by making, publishing and filing or causing to be made, published and filed, false, base, scurrilous and dastardly attacks upon the character of the petitioner in the written answers to certain interrogatories in Case No. 59 C 1996, in the Circuit Court of Cook County, Illinois, specified in the Complaint (Abst. 1-22; Rec. 3-17); that said answers were known by the respondents and each of them, to be totally and completely false, malicious, fraudulent and corrupt fabrications when made, published and filed; that they were calculated to de-

fame, libel, insult, intimidate and injure the petitioner; and that they were known, when made, published and filed to be irrelevant, immaterial and impertinent to the issues in said Case. (Abst. 4-8; Rec. 5-8). *No answer or defense to the Complaint was filed by the respondents; no grounds whatever were alleged in their motion to dismiss; no trial on the merits and no evidence was heard.* (Abst. 23, 24, 61; Rec. 25, 36, 149).

Petitioner filed his motions to strike or deny respondents' motions to dismiss and for Rule on respondents to answer the Complaint on the merits. (Abst. 51-52, 52-54; 54-60, Exh. A; Rec. 134-135, 136-139, 140-145).

On August 10, 1960, an order was entered by Judge Samuel B. Epstein, of Superior Court, Cook County, Illinois, ordering "that the Clerk of the Superior Court of Cook County certify the record on appeal as per Praecipe for Record, the order of Judge Locke impounding the Superior Court files in the above entitled cause notwithstanding". And further ordered "that the Clerk of the Superior Court is not obliged to certify any Circuit Court exhibits in any Circuit Court file as per request in the additional Praecipe for Record other than such exhibits as may be attached to any motion in the Superior Court files in the above entitled cause." (Abst. 64; Rec. 168).

The Certificate of said Superior Court Clerk certifies that the Items listed in respondents' Additional Praecipes are not of Record in the Court. (Abst. 64-65; Rec. 168).

The judgment order of the Illinois Supreme Court entered on January 22, 1962, dismissed petitioner's appeal from the Appellate Court (Appendix C, *infra* pp. 6-7), on the motion of respondents, alleging conclusions only. Petitioner had filed his Objections and Counter-Suggestions. (Certified copies transmitted with Petition.)

In petitioner's Brief filed in the Illinois Supreme Court, the jurisdictional grounds are specified and the constitutional questions are raised and asserted. (Certified copy of Brief, p. 6, 3rd par.; pp. 6-7, 1st par.; p. 7, pars. 1, 2, 3; p. 8, par. 8; p. 9, par. 11; p. 9, 3rd par.; pp. 16-26).

They were raised and asserted in petitioner's Objections and Counter-Suggestions to respondents' motion to dismiss the appeal (pp. 1-3).

Constitutional questions were raised and asserted in petitioner's pleadings in the state trial court. (Abst. 8, par. 13; 51, par. 4; 53, par. 5; Rec. 8, 134, 137).

Constitutional questions are inherent in the judgment order of dismissal of the state trial court (Abst. 61; Rec. 149), and apparent on the face of the Record on Appeal; and are inherent in the judgment order of the Illinois Supreme Court dismissing petitioner's appeal, *viz.*: disregard and denial of the basic constitutional guarantees of Due Process of Law and Equal Protection of the Laws.

Petitioner having taken an appeal direct to the Illinois Supreme Court from the trial court's order of dismissal (Abst. 61-62; Rec. 151), asserted and preserved the constitutional questions involved in this Case.

Under the laws of the State of Illinois, petitioner has no further appellate remedy.

II. The Facts Material to the Questions Presented.

The foregoing statement under the heading of "Procedural History of the Case", in the interest of brevity, is adopted here by reference.

The respondents Gekas and Christoforacos were acquainted since 1950, and were friends. (Abst. 3, pars. 44; Rec. 4, 103, 117). Christoforacos, born in Greece in 1897,

entered the United States via Argentina in 1947 (Abst. 42, 43; Rec. 101, 116, 102, 117). His activities in Greece are indicated by his threat to petitioner on to wit: August 6, 1958, that "There will be another round by the communists in Greece with blood flowing so that a calf could swim". (Abst. 15, par. 4(a); Rec. 13). He worked as a "Tool-Checking Clerk" (Abst. 43; Rec. 102, 117). At all times mentioned in the Complaint, the respondents were representing that Christoforacos had little or no knowledge of English (Abst. 3, par. 6; Rec. 4-5). On December 17, 1958, Christoforacos met Gekas outside his house and left him at 2:00 o'clock in the afternoon. (Abst. 47; Rec. 109, 120). Gekas on that day acted as interpreter, character witness and as additional attorney for Christoforacos, during the criminal prosecution by the People of the State of Illinois against Christoforacos (Abst. 17, 18-20; Rec. 14, 15). During all that time they were conversing, hatching fantastic defamations against the petitioner (Abst. 47; Rec. 109, 120, answers to interrogatories 85 and 86). Since on to wit: August 6, 1958, until January 28, 1959, the petitioner was the target of threats, intimidations, defamations, insults and oppression, specified in Exhibit "B" attached to the Complaint. (Abst. 15-21; Rec. 13-16). Respondent Christoforacos with the help of Gekas, described in said Exhibit "B" (Abst. 18-20; Rec. 15), was discharged during the criminal prosecution trial on December 17, 1958. Respondent Makin who was attorney of record for Gekas in Case No. 1 (Abst. 8; Rec. 27) of this Petition, filed a malicious prosecution suit against the petitioner herein (Abst. 24-26; Rec. 37-42). This petitioner filed an Answer and Counterclaim. (Abst. 26-33, Rec. 43-51; Abst. 13-22, Rec. 12-17). Respondents Gekas and Christoforacos filed motions to strike the Answer and Counterclaim (Abst. 34; Rec. 61-91). Petitioner filed Objections (Abst. 54-64; Rec. 140-145).

The respondents by their motion for involuntary dismissal or judgment on the pleadings or for summary judgment (Abst. 23, 24, 61; Rec. 25, 36, 149) admit:

1. That the defamatory and libelous statements complained of, made in the answers to interrogatories (Abst. 4-7; Rec. 5-7), were published and filed;

2. That they were false and that they were maliciously made, published and filed;

3. That they were fraudulent and corrupt fabrications when made, published and filed, calculated to defame, libel, insult, intimidate and injure the petitioner;

4. That they were known by the respondents, when made, published and filed to be false, immaterial and irrelevant to the issues. (Abst. 6-8; Rec. 6-8).

Reasons for Granting the Writ.

1. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, *'anything in the constitution or laws of any state to the contrary notwithstanding'*. If they fail therein, and withhold or deny rights, privileges, or immunities secured by the constitution and laws of the United States, the party aggrieved may bring the case from the highest Court of the state in which the question could be decided, to this court for final and conclusive determination." (*Robb v. Connelly*, 4 S. Ct. 544, 551, 111 U.S. 624, 28 L. Ed. 542.) (Emphasis added.)

2. The denial of rights given by the Due Process and Equal Protection of the Laws Clause of the Fourteenth Amendment need not be by legislation. Its provisions are

generic in terms and are addressed not only to the states, but to every person, whether natural or judicial, who is the repository of state power. The denial of Due Process may be by the judicial as well as by the executive or legislative branches of the state government. (*Shelley* v. *Kraemer*, 68 S. Ct. 836, 842-843, 844, 846, 847, 334 U.S. 1; *Brinckerhoff* v. *Bill*, 281 U.S. 673, 680 and cases cited; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278, 286; *Scott* v. *McNeal*, 154 U.S. 34, 45). In *Brinckerhoff*, Mr. Justice Brandeis said (281 U.S. on p. 678):

> "We are of opinion that the judgment of the Supreme Court of Missouri must be reversed, because it has denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right."

In *Ohio Bell Telephone Company* v. *Public Utilities Commission*, 301 U.S. 292, Mr. Justice Cardozo said (p. 305):

> "There can be no compromise on the footing of convenience or expedience or because of a natural desire to be rid of harassing delay, when that requirement has been neglected or ignored."

This Court in *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 56 S. Ct. 797, 807-808, held that "The due process clause assures a full hearing before the Court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it." (Citing cases). Petitioner was deprived of this right by the state courts.

In both cases involved in this Petition, through the disguise of filing multitudinous papers under the label of "exhibits", and without proof of their authenticity, contents and materiality, basic constitutional guarantees were ignored and denied. "Manifestly there is no hearing when

the party does not know what evidence is offered or considered and is not given an opportunity to test, explain or refute." (*Interstate Commerce Commission* v. *Nashville R.R. Co.*, 227 U.S. 93.)

This Court in *Napue* v. *People of the State of Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 1178, said:

> "The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate."

"It is now so well settled that the Court was able to speak in *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 121, 74 S. Ct. 403, 410, 98 L. Ed. 546, of the 'long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts of constructions upon which federal constitutional issues rest'". (Citing cases).

In *Williams* v. *Buffy*, 96 U.S. 176 this Court said (p. 183):

> "Any enactment from whatever source originating to which a state gives the force of law is a Statute of the State within the meaning of the clause cited relating to the jurisdiction of this Court. It would be a narrow construction to limit the term to such enactments as having gone through various stages of consideration by the legislatures."

Oyama v. *State of California*, 68 S. Ct. 269, 270, 332 U.S. 633;

Norris v. *Alabama*, 294 U.S. 587, 590, 55 S. Ct. 579, 580.

3. In the instant case the state courts have deprived petitioner of the equal protection of the laws. A formula of convenience and expediency was extended to immunize

respondents for intentional malicious wrongs and criminal acts, admitted by the respondents' motions to dismiss. Such formula which is not and could not be authorized by any constitutional provision or legislative enactment, destroys the safeguards of our constitutional system, required to be extended to all. Such formula of immunity or "privilege" assaults and defies the public interest of law and order. No plea of privilege could ever be invoked, to shield one against liability for a wrong deliberately committed. (*White* v. *Nichols*, 3 Howard (44 U.S.) 266, 287, 291; *Clark* v. *United States*, 289 U. S. 1, 15; *Gebhardt* v. *United Rys. Co. of St. Louis*, 220 S.W. 677, 679 (Mo.); *Rausch* v. *Anderson*, 75 Ill. App. 526, 536, 537; *Mills* v. *Denny*, Iowa 63 N.W. 2d 222, 229):

> "The immunity of a privileged communication is the exception, and he who relies upon an exception must prove all the facts necessary to bring himself within it." (*McRae* v. *Afro-American Co.*, 172 F. Supp. 184, 187, affirmed 274 F. 2d 287, citing *Hyman* v. *Lieberman*, 287 Pa. 78, 134 A. 486.)

In the same case the Court said (p. 187):

> "Motive, manner and reasonable cause would have presented questions of fact."
>
> "The question of whether or not the defendant knew or believed that his libelous words were not pertinent and had no relation to the inquiry, or whether he made the statements without reasonable or probable cause, or whether or not his statements were published in good faith, are questions of fact for the jury. This issue, so far as the sufficiency of the complaint is involved, is presented by the affirmative allegations that the libelous words were published with the malicious intent to defame." (*Dayton* v. *Drumheller*, 32 Idaho 283, 182 P. 102, 104-105).

This same formula was also extended by the state courts to immunize the respondents for assault, (Case No. 1) admitted by their motion for summary judgment. No answer was filed to the Complaint and no evidence was heard. In *Ladner* v. *United States*, 358 U.S. 169, 79 S. Ct. 209, 213, it was said that assault is held to be committed "merely by putting another in apprehension of harm whether or not the actor actually intends to inflict or is capable of inflicting that harm."

The right to equal protection of the law is a right which petitioner may demand. In *Hill* v. *State of Texas*, 316 U.S. 400, 406, 62 S. Ct. 1159, this Court said (p. 1162):

> "Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand."

Mr. Justice Clark, speaking for the majority of the Court in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, said (p. 861):

> "But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is no consolation to an individual denied the equal protection of the laws that it was done in good faith."

Another extension of the formula of immunity by the state courts depriving the petitioner of equal protection of the laws occurred in Case No. 2, where the respondents were held absolutely privileged for intentionally false, defamatory and malicious answers to written interrogatories. It is well established that interrogatories and answers thereto are not pleadings. *Dunlop Co.* v. *Munter Homes Corp.*, D.C. 33 F. Supp. 242; *Sinclair Refining Co.* v. *Jenkins Petroleum Process Co.*, 289 U.S. 689, 696, 53

S. Ct. 736, 738; D.C. 4 F.R.D. 469; *P. Rielly & Son* v. *National Parlor Furniture Co.*, 192 Ill. App. 395; *Ross* v. *Ross*, 35 N.J. Super. 242, 113 A. 2d 700; 4 Moore's Federal Practice (2d Ed.) par. 33.29 (2). Therefore, no privilege could be asserted for such fantastically false and defamatory answers to interrogatories by the respondents.

In *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463, 56 S. Ct. 343, this Court said (p. 348):

> "Upon the state courts, equally with the courts of the union, rests the obligation to guard and enforce every right secured by the Constitution and the laws of the United States whenever those rights are involved in any suit or proceedings before them. *Robb* v. *Connelly*, 111 U.S. 624, 637, 4 S. Ct. 544, 28 L. Ed. 542." *Smith* v. *O'Grady*, 61 S. Ct. 572, 573, 312 U.S. 329.

CONCLUSION.

For the reasons above-stated it is respectfully submitted that this Petition for writs of certiorari be granted.

Respectfully submitted,

PETER S. SARELAS.
30 N. La Salle Street,
Chicago 2, Illinois,
Central 6-1442
Petitioner, Pro Se.

APPENDIX A.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searey, Clerk

BE IT REMEMBERED, that, to-wit: on the 16th day of January, A.D. 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter S. Sarelas,
Appellant
No. 36815 *vs.*
John C. Gekas; and Constantine D. Chapralis, alias Major C. D. Chapralis; and Andrew Cardaras; and George W. Alexander; and Themis Anagnost; and Athanasios A. Pantelis, also known as A. A. Pantelis; and William J. Russis; and Demosthenes I. Georgoulis; and A. Thomas Rangaves; and Demetrios Parry; and Spyros D. Soter, also known as S. D. Soter; and Evangelos Nittis, also known as E. Nittis; and Constantine Mazarakis; and George S. Porikos; and Evangelos C. Despotes; and Themis Tsaoussis; and Adamantios Androutsopoulos; and George A. Xydis; and George Louris,
Appellees.

Appeal from Circuit Court Cook County 58 C 17505

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.

APPENDIX B.

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice
Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 23rd day of January, A.D. 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter S. Sarelas, Appellant, vs. John C. Gekas; *et al.*, Appellees.	Appeal from Circuit Court Cook County 58 C 17505

And now, on this day, the Court having duly considered the motion by appellant for reconsideration of order dismissing this appeal, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellant for reconsideration of order dismissing this appeal be, and the same is, denied.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.

APPENDIX C.

UNITED STATES OF AMERICA

State of Illinois }
Supreme Court } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January, in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray I. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 22nd day of January, 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Peter S. Sarelas, Appellant No. 37001 *vs.* Phillip S. Makin, alias Phillip S. Marinacos; and Basil Christoforacos, alias Hristos Cokinis; and John C. Gekas, Appellees.	Appeal from Appellate Court First District 60 S 5744 48391

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellees to dismiss this

appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

And it is further considered by the Court, that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 9th day of March, A.D. 1962.

Mrs. Earle Benjamin Searcy
Clerk,

Supreme Court of the State of Illinois.